

## Streamlining the Permit Process while Protecting Public Waters

# Proposed Rule – Dredging – NR 345



### Summary of Rule Proposal

Wisconsin Act 118 created a three-tier permit system intended to speed permit decisions without reducing protection of fish and wildlife habitat, navigation, water quality and natural scenic beauty (public rights). Small-scale manual dredging and dredging associated with exempt piers, culverts or other exempt structures no longer need permits unless they are in designated waters. NR 345 sets specifications for when dredging projects are exempt and when projects are eligible for general permits. The proposed rule creates general permits (GP) for manual dredging and maintenance dredging of areas previously dredged.

The Natural Resources Board in June approved holding hearings on the proposed permanent rule – that is the same as the temporary rule put in place at the end of August. DNR has been working with stakeholders to take additional input on the existing emergency rule and for the final version of the permanent rule.

### Why is this an issue for our waters?

Dredging ranges from projects that use bulldozers, backhoes or a hydraulic dredge to remove large amounts of sediment from a lake or stream, to sifting by hand through bottom sediments to harvest aquatic insects for bait or panning for gold. Dredging has the potential to cause substantial and long lasting environmental damage to our public waterways. Whether this happens or not largely depends on where and when dredging is done. Some of the potential impacts include:

- Significant alteration of aquatic habitat that can affect fish populations and open the door for invasive aquatic species like Eurasian watermilfoil.
- Degradation of water quality by suspension of bottom sediments that can smother fish eggs, interfere with feeding, or release hazardous substances potentially affecting the health of humans and aquatic life.
- Direct physical harm to creatures such as turtles, frogs and aquatic insects.

Most people realize the substantial threat to habitat, water quality and even human health that large dredging projects can have. Removing 100,000 cubic yards of material could eliminate a critical bass spawning area, remove the last remnants of an endangered mussel, or open an area to an infestation of Eurasian watermilfoil. Through the permitting process, DNR biologists work with dredging applicants to avoid these types of impacts, and also at the same time, allow the applicant to achieve his or her own goals, if feasible.

Some people think that small dredging projects don't have these impacts. However, the consequences accumulate with the tens or hundreds of small dredging projects done annually. And even one project in a critical reach of a small stream can eliminate spawning habitat, reduce fish reproduction and damage a fishery stressed for another reason, such as a drought.

### Previous Regulations

Prior to Act 118, all dredging projects required permits. Permits were approved if DNR staff determined “no detrimental impact to public rights or interests.” Permits required notification to riparian property owners, but there was no legal requirement for the person who wanted to dredge to be the shoreline property owner. Smaller dredging projects did not require a public notice. However, public notices were published for dredging project greater than 3,000 cubic yards as part of a required Environmental Assessment (EA) or Environmental Impact Statement (EIS).

## Issues and Alternatives

In order to meet the legislative intent of maintaining protection for our public waters, the two different types of exempted dredging activities have to meet the following locational and construction requirements to be eligible for the exemption:

1. Dredging of a farm drainage ditch which was not a navigable stream before ditching:
  - The project has to be located in a agricultural drainage ditch that was not a navigable stream before ditching
  - The applicant has to notify the department of the proposed dredging 10 days in advance
  - The dredging may not have a long-term, adverse effect on a cold-water fishery or may not destroy cold water or warm water spawning or nursery areas for fish.
2. Dredging by hand-held device:
  - No dredging in designated waters
  - The dredge material may not contain hazardous substances
  - Dredged material must be disposed of in uplands or approved solid waste facility.
  - Erosion control best management practices must be used
  - Not more than 4 cubic yards of material may be removed
  - Dredging is restricted at different times to protect cold water and warm water fish spawning
  - Resuspension of sediment must be controlled and total suspended solid limits should be met.

NR 345 then establishes the standards for four different types of general permits. Please see the proposed rule for the specific requirements for each of the following general permits:

1. Installation of utility lines
2. Maintenance dredging of a previously dredged area
3. Manual dredging that does not meet the standards for a statutory exemption
4. Maintenance dredging within an established drainage district

A few new items are included in the proposed permanent rule. NR 345 would define a number of “de minimis” (inconsequential) dredging actions that do not require permits. The code also uses the statutory definition of “hazardous substance” in s. 289.01(11), Stats., and uses the DNR’s Consensus Based Contaminated Sediment Evaluation report (2001) to establish the hazardous concentration of some pollutants found in Wisconsin sediments.

### What do YOU think?

DNR seeks your input on the proposed rules. You can participate in one of several ways:

- Fill out a questionnaire at a public hearing **open house**
- Send comments over the **internet** at <http://adminrules.wisconsin.gov>
- **Testify** at a public hearing. See locations, dates and times by going to DNR’s website [dnr.wi.gov](http://dnr.wi.gov), clicking on “Permits & Licenses”, then “Waterway & Wetlands”
- **Mail** written comments to Ms. Roberta Lund, DNR-FH/3, P.O. Box 7921, Madison, WI, 53707-7921

**Comments accepted through September 7, 2004**